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June 27, 2007

BY E-FILE

The Honorable Gregory M. Sleet
United States District Court
U.S. Courthouse
844 North King Street
Wilmington, DE 19801

Re: Talecris Biotherapeutics, Inc. v. Baxter International Inc. and Baxter
Healthcare Corporation, D. Del., C.A. No. 05-349-GMS

Dear Judge Sleet:

I write on behalf of Baxter Healthcare Corporation and Baxter International Inc. (collectively, "Baxter") in response to Plaintiffs' most recent attempt to exclude the trial testimony of Lawrence Guiheen, the President of the BioPharmaceuticals unit of Baxter BioScience (D.I. 355). Professionalism and simple common sense should not be abandoned merely because we are days from trial. Mr. Bove's conduct in staging a deposition for which he was on notice could not proceed today and his subsequent letter demonstrate that he has lost sight of those bedrock principles.¹

In his zeal to exclude Mr. Guiheen from testifying, Mr. Bove incorrectly contends that Baxter has "elected to evade the duly noticed deposition of Mr. Guiheen." On June 22 by email and as set forth in letters of June 25 and June 26 from Jim Gilliland to Talecris counsel, Talecris was put on notice that Mr. Guiheen is in Europe and unable to appear for a deposition today (letters attached as Exs. A and B, respectively). Baxter further alerted Mr. Bove that Mr. Guiheen's first business day back in this country is Monday, July 2. To accommodate Talecris' counsel and Mr. Guiheen (who lives in California), Baxter offered a number of alternative dates

¹ It is unfortunate that Talecris continues to belabor the subject of Mr. Guiheen testifying at trial. As the court noted at the pretrial conference, Mr. Guiheen's testimony is "pretty straightforward stuff and not controversial." Indeed, in granting Talecris leave to take the deposition, Your Honor even noted that, "[h]opefully [the deposition] won't be necessary. It seems to me you have plenty else to do." Ex. C, Pretrial Conference Tr. at 102:20-103:6.

The Honorable Gregory M. Sleet
June 27, 2007
Page 2

and locations for his deposition. Specifically, Baxter proposed that Talecris conduct his deposition in Los Angeles on either July 2, July 5 or July 6. Baxter's suggestion of a deposition in California is not "manifestly unreasonable" as Mr. Bove contends. Indeed, Baxter's suggestion is based, in part, on the fact that Talecris' counsel will already be in California for the trial deposition of James Giblin, the individual who Talecris claims cannot attend any day of trial and whose deposition they assert must be conducted on Saturday, June 30.

Baxter's proposal to conduct Mr. Guiheen's deposition the very next business day, Monday, July 2, is not only reasonable, it is a convenient date and location for all concerned, including counsel. Simply stated, Talecris' refusal even to consider accommodating Mr. Guiheen and Baxter's counsel is hypocritical to say the least when compared to its "take it or leave it" position with respect to scheduling Mr. Giblin's trial deposition for Saturday, June 30. Finally, as previously indicated, Mr. Guiheen is also available for deposition date in Wilmington on Sunday, July 8, Monday, July 9 or Tuesday, July 10. Talecris rejected all of Baxter's proposals, preferring instead to stage a deposition for a date (today) on which it knew Mr. Guiheen was out of the country.

Even putting aside Talecris' inequitable approach to deposition scheduling, this Court should reject Talecris' transparent attempts to preclude Baxter from calling Mr. Guiheen at trial. Baxter has offered numerous dates and locations for Mr. Guiheen's deposition. Baxter respectfully requests that, if Talecris truly wishes to take Mr. Guiheen's pre-trial deposition, it promptly contact Baxter so that the parties can agree on a suitable date and time for the deposition to proceed.

Respectfully,



Philip A. Rovner
provner@potteranderson.com

PAR/mes/804123

Enclosure

cc: Jeffrey B. Bove, Esq. (by e-mail and hand delivery)
Bradford J. Badke, Esq. (by email)

EXHIBIT A

TOWNSEND
and
TOWNSEND
and
CREW
LLP

San Francisco

Two Embarcadero Center
Eighth Floor
San Francisco, California 94111-3834
Tel 415.576.0200
Fax 415.576.0300

June 25, 2007

VIA E-MAIL AND U.S. MAIL

Jaclyn M. Mason, Esq.
Connolly Bove Lodge & Hutz LLP
1007 North Orange Street
Wilmington, DE 19899

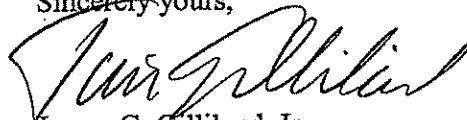
Re: Talecris Biotherapeutics v. Baxter Healthcare

Dear Jaclyn:

As promised, I spoke today with Mr. Lawrence Guiheen about his availability for deposition. I told him the deposition likely would be 2-3 hours.

Mr. Guiheen will be in Europe this week and California next. He could sit for deposition in Los Angeles on July 2 in the afternoon or evening, July 5 in the afternoon or evening, or July 6, morning or afternoon. In addition, Mr. Guiheen will be Baxter's corporate representative at trial. Consequently, he could sit for deposition in Wilmington on Monday night, July 9, or Tuesday night, July 10. Depending upon the length of plaintiffs' case-in-chief, my guess is that Mr. Guiheen will testify the morning of Thursday, July 12, 2007.

Sincerely yours,



James G. Gilliland, Jr.

JGG/sst
61085714 v1

cc: Lawrence Guiheen
Philip A. Rovner, Esq.

EXHIBIT B

TOWNSEND
and
TOWNSEND
and
CREW
LLP

San Francisco

Two Embarcadero Center
Eighth Floor
San Francisco, California 94111-3834
Tel 415.576.0200
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June 26, 2007

VIA E-MAIL & FACSIMILE

Jeffrey B. Bove, Esq.
Connolly Bove Lodge & Hutz LLP
1007 North Orange Street
Wilmington, DE 19899

Re: Talecris Biotherapeutics, Inc. v. Baxter International Inc., *et al.*
U.S.D.C. Dist. of Delaware, Action No. 05-349-GMS
Our Reference No. 018652-004000

Dear Jeff:

Your letter to me, and my letter to Jaclyn Mason, regarding the deposition of Lawrence Guiheen crossed over the Internet yesterday afternoon. As you will have learned from my letter, Mr. Guiheen cannot be in Wilmington tomorrow for a deposition, as he is in Europe. I propose the deposition of Mr. Guiheen occur on July 2, since:

1. You or someone from your firm will be in California this weekend since Baxter has accommodated Talecris' requested and agreed to proceed with the deposition of James Giblin on Saturday, June 30.
2. Connolly Bove has an office in Los Angeles; and
3. Mr. Guiheen's first business day after his return from Europe is Monday, July 2.

I will try to arrange the deposition to occur as early as possible on July 2 so you, or whoever is taking the deposition, can get back to Delaware on July 2.

Sincerely yours,


James G. Gilliland, Jr.

JGG/sst
61086096 v1

cc: Lawrence Guiheen
Philip A. Rovner, Esq.

EXHIBIT C

1

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

TALECRIS BIOTHERAPEUTICS, INC.,
Plaintiff,
v.
BAXTER INTERNATIONAL INC.
and BAXTER HEALTHCARE CORPORATION,
Defendants. No. 05-349-GMS

BAXTER HEALTHCARE CORPORATION,
Counterclaimant,
v.
TALECRIS BIOTHERAPEUTICS, INC. and BAXTER HEALTHCARE LLC,
Counterdefendants.

Wilmington, Delaware
Thursday, June 14, 2007
9:30 a.m.
Pretrial Conference

BEFORE: HONORABLE GREGORY M. SLEET, U.S.D.C.J.

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1 APPEARANCES:

JEFFREY B. BOVE, ESQ.,
MARY W. BOURKE, ESQ.,
JACLYN M. MASON, ESQ., and
DANA K. HAMMOND, ESQ.
Connolly Bove Lodge & Hutz LLP
-and-
BRADFORD J. BADKE, ESQ.
Ropes & Gray
(New York, N.Y.)

Counsel for Plaintiff and
Counterdefendants

PHILIP A. ROVNER, ESQ.
Potter Anderson & Corroon LLP
-and-
JAMES G. GILLILAND, JR., ESQ.,
SUSAN M. SPAETH, ESQ.,
ANNE M. ROGASKI, ESQ., and
MEGAN M. CHUNG, ESQ.
Townsend and Townsend and Crew
(Palo Alto, CA)

Counsel for Defendants and
Counterclaimant

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09:33:13 1 THE COURT: Good morning. Please take your
09:33:16 2 seats. This is an office conference. We will dispense with
09:33:19 3 the formalities of Court, unless counsel prefer to stand up
09:33:22 4 and speak on your feet. Some do, and that is fine. But
09:33:25 5 feel free to sit at counsel table as we discuss the issues
09:33:28 6 that we need to talk about today.
09:33:30 7 Why don't we start with a round of
09:33:33 8 reintroductions, beginning with plaintiff's table.
09:33:36 9 MR. BOVE: Good morning, Your Honor. Jeff Bove
09:33:38 10 for Talecris and Bayer. And I have my co-lead counsel and
09:33:41 11 partner, Mary Bourke, my associate, Jaclyn Mason, my
09:33:44 12 associate, Dana Hammond, and also counsel for Bayer, Jim
09:33:48 13 Badke from Ropes & Gray.
09:33:49 14 THE COURT: Good morning.
09:33:50 15 (Counsel respond "Good morning.")
09:33:53 16 THE COURT: Mr. Rovner.
09:33:53 17 MR. ROVNER: Good morning, Your Honor. With me
09:33:55 18 from my left is Susan Spaeth, Megan Chung, Jim Gilliland,
09:34:01 19 Anne Rogaski, all from Townsend and Townsend and Crew. And
09:34:05 20 behind me is Jane Choi from Baxter.
09:34:07 21 THE COURT: It is good to see, we are seeing
09:34:08 22 more and more in-house counsel come, and I think that is a
09:34:12 23 good thing, having served as in-house counsel at one point.
09:34:14 24 MR. BOVE: Your Honor, I also wish to introduce,
09:34:17 25 so as not to forget, Chris Jeffers and Mark Freeman, also

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09:34:22 1 associates at my firm.
09:34:23 2 THE COURT: Good morning.
09:34:24 3 It just happened, I don't know if you have seen
09:34:26 4 it yet, the ruling on the disqualification. There is a
09:34:33 5 summary judgment issue outstanding.
09:34:34 6 I am going to reject the notion that the claim
09:34:39 7 is indefinite. There will be an opinion issued forthwith.
09:34:47 8 Let me just tell you how we are going to
09:34:50 9 proceeded today. We are going to first address motions in
09:34:54 10 limine. We will have, hopefully, reasonably limited
09:34:58 11 discussion about these motions. Two of them, I think 3 and
09:35:05 12 4, Plaintiff's 3 and 4, which may encompass another motion,
09:35:31 13 I am going to deal with rather summarily. I will read a
09:35:33 14 ruling into the record. So I am not going to entertain
09:35:36 15 argument on those motions.
09:35:39 16 We will, not necessarily in this order, talk
09:35:44 17 about other things after the motions in limine, like voir
09:35:53 18 dire. We will address in some detail preliminary
09:35:57 19 instructions today. Time permitting, I want to discuss with
09:36:01 20 you the final jury instructions as well, to the extent that
09:36:04 21 we can. I don't know if there is a more recent iteration
09:36:08 22 that has been developed post the PTO submission. I have at
09:36:15 23 least in summary fashion read through your proposed final
09:36:22 24 jury instructions, and do have some thoughts about that.
09:36:24 25 Yes, Mr. Bove.

09:33:13

<p style="text-align: center;">101</p> <p>11:48:57 1 fact witnesses only.</p> <p>11:48:58 2 THE COURT: That is fine.</p> <p>11:49:01 3 Why don't you pull out your joint proposed final</p> <p>4 jury instructions. I think, unless there are any other</p> <p>11:49:07 5 issues, I am prepared to try to quickly at least go through</p> <p>11:49:10 6 the tabs.</p> <p>11:49:13 7 MS. MASON: That is fine, Your Honor. We again</p> <p>11:49:15 8 have spoken with Baxter. We have agreed to have a further</p> <p>11:49:18 9 meet-and-confer on these.</p> <p>11:49:19 10 THE COURT: With that said, would counsel prefer</p> <p>11:49:22 11 to have another crack?</p> <p>11:49:23 12 MS. MASON: I believe, Your Honor. I think it</p> <p>11:49:26 13 would be a much more efficient use of Your Honor's time.</p> <p>11:49:28 14 THE COURT: Agreed.</p> <p>11:49:28 15 MR. GILLILAND: Yes.</p> <p>11:49:30 16 THE COURT: That's fine.</p> <p>11:49:33 17 MR. BOVE: Your Honor, one other unrelated</p> <p>11:49:35 18 point. There were two witnesses identified late in the</p> <p>11:49:40 19 game. One was for Talecris Mr. Larry Stern, the other for</p> <p>11:49:45 20 Baxter Mr. Larry Goheen (phonetic). Since they were late in</p> <p>11:49:52 21 the game, and frankly were not on any initial disclosures,</p> <p>11:49:56 22 or even identified during fact discovery, I had proposed to</p> <p>11:50:01 23 Baxter in our meet-and-confer on Tuesday evening that we</p> <p>11:50:04 24 simply obviate the issue, that we were prepared to withdraw</p> <p>67 25 Mr. Stern if they were prepared to withdraw Mr. Goheen,</p>	<p style="text-align: center;">103</p> <p>11:51:44 1 indicated, if you want to take a deposition, Mr. Bove, take</p> <p>11:51:47 2 a deposition. You have the permission of the Court to do</p> <p>11:51:50 3 that.</p> <p>11:51:51 4 MR. BOVE: Thank you, Your Honor.</p> <p>11:51:52 5 THE COURT: Hopefully, it won't be necessary.</p> <p>11:51:53 6 It seems to me you have plenty else to do.</p> <p>11:51:57 7 The last subject, and certainly not the least,</p> <p>11:52:01 8 that I want to address is to be brought up to date on what</p> <p>11:52:05 9 if any additional efforts are being made to settle this</p> <p>11:52:08 10 matter.</p> <p>11:52:09 11 MR. BOVE: Your Honor, if I may address that.</p> <p>11:52:11 12 As the Court may or may not be aware, we did</p> <p>11:52:14 13 spend a day with Magistrate Judge Thyng.</p> <p>11:52:16 14 THE COURT: I am aware of that.</p> <p>11:52:17 15 MR. BOVE: And put an effort into this.</p> <p>11:52:22 16 Magistrate Judge Thyng did contact us by e-mail. I presume</p> <p>11:52:28 17 she did as well to Baxter.</p> <p>11:52:30 18 THE COURT: I am sure she did.</p> <p>11:52:32 19 MR. BOVE: But I don't know that. And I have</p> <p>11:52:33 20 subsequently conferred at length with Magistrate Judge</p> <p>11:52:37 21 Thyng. She then was provided information that she</p> <p>11:52:42 22 requested from us, and indicated that she would basically</p> <p>11:52:46 23 get back to me with any further response to that</p> <p>11:52:52 24 information. That's where it was left. I believe this was</p> <p>11:52:56 25 about two weeks ago, give or take. That's where we stand.</p>
<p style="text-align: center;">102</p> <p>11:50:11 1 because we don't know what either will be saying. And</p> <p>11:50:14 2 Baxter was equivocal on this point.</p> <p>11:50:17 3 I wanted to raise it now while we were all here,</p> <p>11:50:20 4 because if Baxter is unwilling to withdraw Mr. Goheen, I</p> <p>11:50:24 5 would like to take his deposition, a short deposition.</p> <p>11:50:29 6 THE COURT: Ms. Rogaski.</p> <p>11:50:30 7 MS. ROGASKI: Your Honor, neither party raised</p> <p>11:50:32 8 an objection to either of those witnesses being included on</p> <p>11:50:36 9 the witness list. This objection was just raised this week.</p> <p>11:50:43 10 We offered to exchange one-paragraph summaries about the</p> <p>11:50:48 11 expected subject matter of the witness' testimony. Neither</p> <p>11:50:50 12 of these witnesses, I don't think, or at least Larry Goheen</p> <p>11:50:55 13 is not going to be a technical witness diving into the deep</p> <p>11:51:00 14 issues in this case.</p> <p>11:51:02 15 He will be introducing Baxter and providing some</p> <p>11:51:06 16 information about Baxter. We are more than happy to provide</p> <p>11:51:12 17 a one-paragraph summary to plaintiffs. If Your Honor</p> <p>11:51:15 18 believes that a deposition is required, of course, we will</p> <p>11:51:18 19 comply with that. We think it's pretty --</p> <p>11:51:20 20 THE COURT: Why don't I leave -- it's sounding</p> <p>21 to me like what you are going to say is it's pretty</p> <p>11:51:25 22 straightforward stuff and not controversial. Perhaps, with</p> <p>11:51:30 23 the provision of the summary, you can make an assessment. I</p> <p>11:51:36 24 will grant leave, should counsel agree, without further</p> <p>11:51:39 25 application to the Court, that if you feel, Ms. Rogaski has</p>	<p style="text-align: center;">104</p> <p>11:53:01 1 THE COURT: Baxter's perspective?</p> <p>11:53:02 2 MR. GILLILAND: Baxter did receive the e-mail</p> <p>11:53:04 3 from Magistrate Thyng, asking us for further questions,</p> <p>11:53:08 4 issues, ideas about settlement. We have responded. We have</p> <p>11:53:12 5 not yet heard back from the Court.</p> <p>11:53:14 6 THE COURT: Are there any efforts independent of</p> <p>11:53:16 7 the Magistrate Judge currently under way, perhaps by</p> <p>11:53:22 8 principals or others?</p> <p>11:53:24 9 It was interesting, a couple of weeks ago, I had</p> <p>11:53:31 10 Dyson versus Hoover-Maytag-Whirlpool, that matter here. On</p> <p>11:53:39 11 the morning of trial, unbeknownst to trial counsel, one of</p> <p>11:53:46 12 the parties -- this was the Lucent matter. This was not</p> <p>11:53:52 13 Dyson. This was Lucent, Telcordia. And Lucent settled out.</p> <p>11:54:08 14 Mr. Powers was left holding the bag. He lost. That is a</p> <p>11:54:16 15 whole other story. He is coming back soon. He is going to</p> <p>11:54:21 16 get me for that. Great lawyer, though.</p> <p>11:54:26 17 So I just inquire for that reason, as to whether</p> <p>11:54:31 18 you know of any other efforts.</p> <p>11:54:32 19 MR. GILLILAND: Your Honor, to the best of my</p> <p>11:54:34 20 knowledge, the principals have not spoken with each other</p> <p>11:54:36 21 recently. I think that the guidance that both sides were</p> <p>11:54:40 22 expecting to receive from the Magistrate Judge is whether</p> <p>11:54:44 23 the parties are within shouting distance of one another that</p> <p>11:54:47 24 would make it worthwhile to talk further.</p> <p>11:54:49 25 THE COURT: It's a point of information for us.</p>